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AB-6 (SUB-NO. 409X)



FACSIMILE TRANSMITTAL

DATE: 5/3/06

TIME: 8:50AM

NUMBER OF PAGES: 4 INCLUDING THIS COVER PAGE.

TO: Vernon Williams, Secretary

ADDRESS: Surface Transportation Board

FAX NUMBER: (202) 565-9000

FROM: JOHN A. SIMS

TELEPHONE NUMBER: (817) 352-2376

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NOV-00 11 4

Sims, John A

From: Sims, John A
Sent: Wednesday, May 03, 2006 8:41 AM
To: 'newman@stb.dot.gov'
Cc: Sims, John A
Subject: FW: STB Docket No. AB-6 (Sub-No. 409X); BNSF Railway Company Abandonmentbetween Reynolds and Superior, NE

Ms. Newman,

I apologize for getting back to you so late on this matter. You called awhile back indicating that the Board had received our consummation notice, dated January 24, 2006, in the above-referenced docket. You also inquired as to whether BNSF had fulfilled Condition #2 imposed in the STB decision served on July 27, 2004. Specifically, if BNSF had, prior to salvage activities, consulted with the Nebraska Office of the U.S. Fish and Wildlife Service (Nebraska FWS) regarding measures that should be taken to avoid impacts to migratory birds, pursuant to the Migratory Bird Treaty Act.

In our conversation, I mentioned that BNSF had assigned this condition to our salvage contractor in the salvage agreement. Unfortunately, our contractor did not resolve this condition prior to salvaging the line. You had asked that I provide you with a letter as to what had occurred in this particular matter and what measures would be put in place to prevent this from happening in the future.

Please read the string of e-mails attached. This outlines what occurred in this matter and the measures that BNSF have put in place to try and avoid this from happening in the future.

If you have any questions, please contact me at (817) 352-2376.

John Sims, Paralegal
BNSF - Law Dept
2500 Lou Menk Dr, 3rd Fl
Fort Worth, TX 76131-2828

-----Original Message-----

From: Robert_Harms@fws.gov [mailto:Robert_Harms@fws.gov]
Sent: Thursday, April 27, 2006 3:06 PM
To: Sims, John A
Cc: Steve_Anschutz@fws.gov; John_Cochnar@fws.gov
Subject: Re: STB Docket No. AB-6 (Sub-No. 409X); BNSF Railway Company Abandonmentbetween Reynolds and Superior, NE

Mr. Sims:

The U.S. Fish and Wildlife Service (Service) has completed its review of measures outlined below to address avoidance of adverse impacts to migratory birds that may result due to Burlington Northern Sante Fe railroad salvaging activities. The Service is satisfied with the measures proposed to be implemented and considers this matter resolved. It is recommended that salvagers contact me at (308) 382-6468, extension 17, prior to salvage, regarding measures to avoid impacts to migratory birds, pursuant to the Migratory Bird Treaty Act.

If you have any questions, please contact me.

Bob Harms

Robert R. Harms
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service

203 West Second Street
Grand Island, Nebraska 68801
Phone: 308-382-6468, Extension 17
Fax: 308-384-8835
robert_harms@fws.gov

"Sims, John A"
<John.Sims@bnsf.com>
<John.Sims@bnsf.com>

To: <robert_harms@fws.gov>
cc: "Sims, John A"

409X); BNSF

Subject: Re: STB Docket No. AB-6 (Sub-No.

04/12/2006 02:46
Reynolds and Superior,
PM

Railway Company Abandonment between
NE

Mr. Harms,

Please reference our conversation a few weeks ago regarding the above-referenced matter. In our conversation I mentioned that we had completed the salvage of the above-referenced rail line. However, prior to salvaging the line, our salvager was to resolve an outstanding Surface Transportation Board (STB) condition that was assigned to them in the salvage agreement by BNSF. Our salvager was to contact Sharon Whitmore, Nebraska Office of the U.S. Fish and Wildlife Service (FWS) at (308) 382-6468, prior to salvage, regarding measures to avoid impacts to migratory birds, pursuant to the Migratory Bird Treaty Act. Based on that conversation, our salvager was to provide BNSF with a letter summarizing their discussion with FWS.

Unfortunately, we learned that the salvage contractor did not resolve this condition prior to salvaging the rail line. On learning that fact, we consulted with your office and you requested that BNSF put measures in place to address the situation with future salvage operators. As a result of this incident, we have now instituted a new process with salvagers requiring them to certify to BNSF engineering representatives, in advance of salvage activities, that they have complied with any environmental compliance with environmental conditions as a precondition to salvage.

We hope this adequately addresses your concerns for the future and apologize for the oversight on our part in this matter. Please advise if you consider the matter resolved or if you require further action or consultation in this matter.

Sincerely,

John A. Sims, Paralegal

BNSF - Law Dept

2500 Lou Menk Dr, 3rd Fl

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